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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-0330

RECEIVED

DEC - 9 2009

JOEL SCHNEIDER  
U.S. Magistrate Judge

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In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

GEORGE ALVAREZ

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

---

\* \* \* \*

THURSDAY, NOVEMBER 12, 2009

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4  
5 Transcript of proceedings in the above  
6 matter taken by Theresa O. Mastroianni, Certified  
7 Court Reporter, license number 30X100085700, and  
8 Notary Public of the State of New Jersey at the  
9 United States District Court House, One Gerry Plaza,  
10 Camden, New Jersey, 08102, commencing at 3:14 PM.  
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1 JUDGE BISSELL: I am reopening  
2 proceedings in the case of George Alvarez, docket  
3 number 08-0330.

4 This opinion/report is being issued  
5 pursuant to the directives of the Order of Reference  
6 to a Special Master and the Special Master's  
7 Agreement and the guiding principles of law which  
8 underlie this decision to be applied to the facts  
9 upon which it is based as set forth in the jury  
10 instructions in the Walker and Mejias jury charges to  
11 the extent applicable to the allegations of Mr.  
12 Alvarez.

13 As finalized after review under Local  
14 Civil Rule 52.1, this transcript will constitute the  
15 written report required under paragraph seven of the  
16 Order of Reference to a Special Master.

17 Mr. Alvarez, was housed in Trailer  
18 Number Three and the the SOG team was called in on  
19 August 2nd, 1997, some three days after the death of  
20 Officer Baker, to clear the unit for the  
21 transportation of inmates to the gym.

22 Mr. Alvarez recounts three incidents of  
23 assaults against him. And although I determine, as  
24 will be stated more completely hereafter, that his  
25 statements with regard to the extent of his injuries

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1 are somewhat exaggerated, I do find that he has made  
2 out his claim.

3 As with other cases, particularly where  
4 there is contradictory evidence or the opportunity  
5 for contradictory inferences as to whether something  
6 happened or did not, I have scrutinized the record  
7 for conduct as described in the testimony which has,  
8 if you will, a ring of truth to it or a set of  
9 circumstances that supports the accuracy of what is  
10 described. And I find that that's the case here.

11 The SOG units employed various  
12 techniques to generate an atmosphere under which the  
13 prisoners would be intimidated and, hence, more  
14 readily controllable, whether in the incident  
15 involved at a given time or as a means of delivering  
16 a message which would be expected to endure  
17 throughout the lockdown. One of those techniques is  
18 accurately described (as in the case of Mr. Alvarez),  
19 as inconsistent behavior which essentially put a  
20 prisoner between a rock and a hard place and led to  
21 him being beaten or retribution exerted against him  
22 for following first one set of orders and then  
23 another. And that's the case with Mr. Alvarez.

24 I'll try not to belabor this record  
25 with lengthy quotes, but beginning at page 12 of his

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1 testimony on September 29th, 2009 with the arrival of  
2 the SOG officers, he states as follows:

3 "Answer: Yeah, well, they was  
4 hollering, and as they came through -- as they came  
5 up the ramp and went through the door, that's when  
6 you heard them, you heard them screaming, telling  
7 everybody, put your face in the pillows, get down,  
8 get down, put your face in the pillows. Started  
9 banging the night sticks on the wall and doing that  
10 stomp. It was causing a lot of confusion. I didn't  
11 know what to do. I never experienced nothing like  
12 this in my life. So I just complied. I just did  
13 what they asked us to do. So then they ran down --  
14 when I said they ran down, the SOGs, a group of guys,  
15 how many I don't know specifically, I know a bunch of  
16 them ran down our trailer and started hitting on the  
17 lockers and telling us to get in the beds, put your  
18 face in the pillow. And then, you know, they was  
19 banging and hitting on us, get on the bed, get on the  
20 bed. If you wasn't on the bed, they would hit you  
21 and force you on the bed.

22 "Question: Did you follow their  
23 orders?

24 "Answer: I complied. I complied. I  
25 was sitting on my bed when they first came down.

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1 When they said put your face in the pillow and hit me  
2 with the stick, I just put my face in the pillow.  
3 That group of guys ran out and you could hear them  
4 running down another wing of the hall and then  
5 another set of officers came in and said get on the  
6 floor, get on the floor, get on the floor. And then  
7 they started hitting us off the beds, pulling us off  
8 the mattresses and throwing us on the floor and they  
9 hit us and then they ran out. They ran down the  
10 tier. Then the first group of guys came back, didn't  
11 we tell you to get on the beds? They continued to  
12 kick us when we were on the ground.

13 "Question: Mr. Alvarez, I have to ask  
14 you -- if you can slow it down a little bit, we're  
15 having a difficult time keeping up with you. Try to  
16 take it step by step.

17 At some point a group of officers  
18 ordered you on the bed and head in the pillow. Did  
19 you comply?

20 "Answer: Yes, sir.

21 "Question: After you complied, what  
22 happened with that set of officers in your unit?

23 "Answer: I believe they walked out --  
24 they ran -- they marched -- they actuall, the whole  
25 time they was just marching, and they marched out of

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1 there and you could hear them marching and screaming  
2 down the other wings.

3 "Question: So when you were first  
4 ordered head in the pillow, were you struck at that  
5 time?

6 "Answer: I was struck because I was  
7 sitting on my bunk when they first came down the tier  
8 and he struck me, told me put my face in the pillow  
9 and he hit me. And I laid down and put my face in  
10 the pillow. And he said interlock your fingers. So  
11 I was my face in the pillow with my hands interlocked  
12 like this and I complied. And then another -- I  
13 would say it was either the same group, I didn't  
14 know, or another group of officers came in and they  
15 came in and ordered totally different directions for  
16 us to do and they told us to get on the floor. And  
17 he hit -- he hit us and pulled us off the bunks --  
18 like I know he hit me and grabbed me and shoved me  
19 onto the ground and kicked me and said get on the  
20 floor, get on the floor. So I complied and I stood  
21 on the floor with my face down on the floor and then  
22 they ran down the wing. And when they came back out,  
23 the first group I'd say, I would say the first group  
24 because then they came back talking about didn't we  
25 tell you to put your face down in the pillows, what



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1 are you doing on the floor? And they beat us some  
2 more and told us to get on the beds."

3 There is some elaboration beyond that.

4 And he was then asked: What parts of  
5 his body was struck?

6 "Answer: I was hit all in the face. I  
7 was hit in the face. I was hit in the ribs with the  
8 night sticks. Punched in the ribs. I was kicked. I  
9 was kicked when I was on the ground. I was kicked in  
10 the head. I was kicked on the floor. I was punched  
11 all about my face, all in my face. My ribs are so  
12 sore, I just remember it being so, so, so hard to  
13 breathe the first night after it all happened, et  
14 cetera."

15 Once again, I find that that's  
16 believable, at least to the extent of the conduct of  
17 the SOG officers keeping the inmates off balance,  
18 giving them inconsistent orders and then inflicting  
19 punishment because of it.

20 As I said earlier, I find that there is  
21 some overstatement with regard to the extent of the  
22 injuries and the extent of the assaults because of  
23 the absence of visible indicia thereof at later  
24 points throughout the day. I'll deal with that in  
25 the question of damages.

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1           The plaintiff then testified beginning  
2   at page 20 of the same transcript with regard to his  
3   being brought out of his cell and the commencement of  
4   the journey, if that's the word to put it, to the  
5   gym.

6           Starting at page 20:

7           "Answer: They took me after they told  
8   me to get my clothes off and put the handcuffs off  
9   me, put the handcuffs on me, they told me -- they  
10   didn't tell me, they just shoved me. When they  
11   shoved me, I bumped into -- they shoved me into -- I  
12   stumbled into the officer. That officer proceeded to  
13   hit me, told me that I tried to assault him. And  
14   when he hit me, he pushed me into another officer,  
15   that officer accused me of trying to assault him and  
16   he hit me some more. And they just continued to pass  
17   me down and pass me down and pass me down and to each  
18   officer I got to, he proceeded to hit on me and shove  
19   me. And then I would bump into another one and he  
20   said, what are you trying to assault me, too? And he  
21   continued to hit me and he passed me until I got to  
22   where the door was at. When the last officer shoved  
23   me, he shoved me into the steel door. The steel door  
24   is when you go up the ramp is the door you have to  
25   open there to enter the trailer."

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1 I find that there is credibility in  
2 that in the sense that these officers, once again,  
3 looking to deliver a message and gain control of the  
4 situation, would push an inmate into each other and  
5 accuse him of assault and retaliate against him. I  
6 find that that occurred on this occasion.

7 He then talks about one other incident,  
8 beginning at page 22, line seven.

9 "Answer: At one point when I got to  
10 the gate of Three Trailer, the officer grabbed me and  
11 threw me up on the fence and started to ask me  
12 questions, what gang am I in? And I would say I'm  
13 not in no gang. And he would hit me and hit me and  
14 hit me and hit me and hit me. He hit me all up in  
15 the backs of my ribs. He was hitting me -- he was  
16 just hitting me so hard up on my ribs that it felt  
17 like he was giving me, like, kidney shots underneath  
18 my ribs. And he asked me if I was a cop killer, did  
19 I think I was a cop killer. And he would hit me and  
20 he would shove me down. And then the next officer  
21 grabbed me and threw me up on the fence and did the  
22 same thing to me, asking me if I was a King, if I was  
23 a Latin King, asking me if I was a Neta. And every  
24 time I replied no, they would hit me some more. It  
25 continued all the way until it finally ended when I

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1 made it to the gym. The beating stopped when I made  
2 it to the gym."

3 And the evidence is that he had a  
4 tattoo which was the source of their inquiries as to  
5 whether he was a Latin King or Neta member. And that  
6 comes out at page 70 of the transcript. Beginning at  
7 line five.

8 "Answer: I did say that we only left  
9 with boxer shorts and shower shoes and we were  
10 handcuffed, because I have a tattoo on my back  
11 shoulder that has some praying hands with some  
12 rosaries. The officers that seen that tattoo were,  
13 like I said, they kept asking me, am I a Latin King  
14 or am I a Neta because they thought because I had a  
15 tattoo of the rosaries, that they see the rosaries in  
16 prison, tattoos of rosaries, they affiliated that  
17 with me being involved with some kind of gang or  
18 something. They were asking me questions to the  
19 extent, then why is the tattoo on your back? Are you  
20 a king? They would hit me and they would ask me if I  
21 was a cop killer and hit me."

22 Once again, there is supporting  
23 evidence to provide a ring of truth for that. There  
24 were Latin Kings in the population and these SOG  
25 officers, although there only to make a transport to

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1 the gym, were deciding, it seems, to undertake their  
2 own bit of investigation and harassment here to  
3 determine if this man would at least admit to being a  
4 member of a Latin King gang, information which  
5 presumably they could pass on to where it was needed.

6 So once again, although I determined  
7 that the description of the extent of the beatings  
8 inflicted on him is exaggerated because there were no  
9 visible signs of that and no reference in ensuing  
10 ombudsmen reports or otherwise to injuries of this  
11 kind being visible, and particularly the alleged  
12 facial beating was exaggerated because the risk of  
13 such visible markings and swellings on the face would  
14 certainly have brought considerable jeopardy to the  
15 officers involved; nevertheless, I do find that this  
16 is an accurate description of SOG conduct which I  
17 find supportable given the entirety of the situation.

18 Now, I have not disregarded the  
19 testimony of Officer Buganski who was on the first  
20 shift, who was regularly on the first shift at  
21 Trailer Number Four East. However, on September 2nd,  
22 he had pulled a shift at Trailer Number Three West.  
23 He testified that he believes he would hear the  
24 noises of any beatings or screamings on the wings.  
25 However, as the testimony here acknowledges and as

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1 has been established in other instances, a standard  
2 MO of the SOG people, and there were a large number  
3 of them there at the time, was to bang on things with  
4 their batons and yell instructions and directions  
5 repeatedly. Accordingly, I determined here that  
6 there was enough background noise or din generated by  
7 the SOGs themselves so that a beating as described by  
8 Mr. Alvarez in his cell could take place and that  
9 Officer Buganski would not necessarily hear it.

10 He testified that he did not see any  
11 injured inmates in the course of this movement,  
12 however, there is no indication or certainty that Mr.  
13 Buganski saw all inmates from Trailer Number Three in  
14 the course of their movement back and forth from the  
15 gym.

16 He also stated that he saw no assaults  
17 on Three West on August 2nd, but that to me is not  
18 conclusive of the fact that they may have occurred  
19 even though he didn't see it.

20 Once again, with Mr. Alvarez and his  
21 tattoos and a desire on behalf of SOGs to extract  
22 from him an admission that he was a Latin King or a  
23 Netta, that this conduct took place.

24 As far as his injuries were concerned,  
25 I find that there was a pain in the ribs that was

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1 intense for a few days and then lasted several weeks  
2 before abating on its own. He sought no medical  
3 attention based on threats that he could become lost  
4 in the system. However, I do find that at least the  
5 injuries inflicted were not so severe as to indicate  
6 breakage or to require medical assistance.

7 I find that, consistent with the facts  
8 as determined here and the principles of law defining  
9 the use of excessive force and with it thereby the  
10 infliction of cruel and unusual punishment, the  
11 actions undertaken here by the SOG officers not only,  
12 in fact, occurred, but they go well beyond the  
13 necessity of any proper law enforcement needs or any  
14 proper exercise of discipline or other legitimate  
15 penalogical purpose as well defined in those jury  
16 instructions.

17 There was indeed excessive, unnecessary  
18 and sadistic force imposed upon Mr. Alvarez in each  
19 of the instances that I have just described.  
20 Furthermore, I determine that this is one of those  
21 instances in which the imposition of punitive damages  
22 is appropriate as well.

23 I'm recommending a compensatory award  
24 of \$4,500. Keeping in mind the amount of the  
25 compensatory damages and realizing that an exact

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1 ratio is not required between punitive and  
2 compensatory damages, although it is something that  
3 can be considered, I will address that amount in a  
4 moment.

5 Perhaps to repeat, there was indeed  
6 excessive, unnecessary and sadistic force imposed  
7 upon Mr. Alvarez within the contemplation of the  
8 legal principles that were established in a claim for  
9 compensatory damages. But I also find that the  
10 actions of the SOG officers in these particular  
11 circumstances were indeed motivated by evil motive or  
12 intent. They essentially made sport of Mr. Alvarez  
13 here with the tactics which they employed. Their  
14 conduct can well be characterized as engaging in  
15 reckless and callus indifference to his federally  
16 protected right to be free of cruel and unusual  
17 punishment.

18 There is, indeed, that aggravated level  
19 of conduct here which in my determination supports a  
20 claim for punitive damages in this matter.

21 Finally, although not every item of  
22 evidence has been discussed in this opinion/report,  
23 all evidence presented to the Special Master was  
24 reviewed and considered.

25 I find that the injuries inflicted here



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1 are actionable. Once again, they are not as  
2 extensive as the plaintiff testified, but they did,  
3 indeed, take place as I previously described them.  
4 They were acute initially and remained present for  
5 several weeks before abating on their own. There was  
6 pain incurred by Mr. Alvarez in the time period  
7 before it abated. Accordingly, I recommend in this  
8 report that the district court enter an award of  
9 compensatory damages in the amount of \$4,500 in Mr.  
10 Alvarez's favor.

11 As for the award of punitive damages,  
12 because as I've mentioned before we have here an  
13 instance, frankly, of an evil motive or intent in  
14 making sport of Mr. Alvarez, and certainly at the  
15 very least a reckless and callus indifference to the  
16 consequences of the acts of these people, I recommend  
17 in this report that the district court enter an award  
18 of punitive damages in the amount of \$9,000 in Mr.  
19 Alvarez's favor. So to summarize, I am recommending  
20 awards of \$4,500 in compensatory damages and \$9,000  
21 in punitive damages.

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## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. XI0857  
Date: November 20, 2009

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